

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Melvin Lee Parker)
Map 072-08-0, Parcel 22.00) Davidson County
Residential Property)
Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$20,000	\$95,200	\$115,200	\$28,800

An appeal has been filed on behalf of the property owners with the State Board of Equalization.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A hearing was conducted on May 10, 2006 at the Davidson County Property Assessor's Office. Present at the hearing were Melvin Lee Parker, the taxpayer, and Jason Poling was present for the Metro. Property Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 1431 McGavock Pike in Nashville, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(b)(2) & 67-5-1412(e). Nevertheless, the legislature has also provided that:

The taxpayer shall have **a right to a hearing and determination to show reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing Tenn. Code Ann. § 67-5-1412(e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except **where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added.*) *Associated Pipeline Contractors Inc.* (Williamson County, Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction to this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

In this case, the taxpayer, Mr. Parker, did not appeal to the Davidson County Board of Equalization because he was hospitalized. Mr. Parker did not provide a copy for the administrative judge or Mr. Poling but did show us the documents. He has had a knee replacement and then developed a staph infection which has left him weak. Mr. Parker also stated that this occurred during June and July of 2005.

The administrative judge finds that reasonable cause does exist justifying the failure to first appeal to the Davidson County Board of Equalization and thus the State Board of Equalization does have jurisdiction to hear this appeal.

Now as to the issue of value: Tennessee Code Annotated § 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its **sound, intrinsic and immediate value**, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...."

The germane issue is the value of the property as of January 1, 2005. Since Mr. Parker seeks to change the present valuation of the subject property, he has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

In support of his contention of value, he alleges the property is worth \$85,000. His contention of value is based on the changes in the neighborhood. The home is 70 years old with no improvements and an increasing high crime in the area. Mr. Parker stated that several of the once single family residences in the neighborhood have begun renting single rooms to transient individuals which have generally affected the property values. Mr. Parker further stated that his garage is routinely burglarized and his possessions stolen; he now carries a gun when he is outside.

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$96,100 based upon the principle of external

obsolescence.¹ This is demonstrated by the decline in the neighborhood and influx of urban blight. Mr. Parker's older home is fast approaching the age where drastic changes will be needed to make it livable. With the reversal of the neighborhood's composition, the neighborhood is likely to further decline. Mr. Parker's description does not rise to the statutory definition of a blighted area² but it appears from his description to be fast approaching that condition.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The presumption of correctness that attaches to the decision from the County Board of Equalization is just that, a rebuttable presumption that can be overcome by the taxpayers' presentation.³ To hold that it is a conclusive presumption would essentially eliminate the right of a taxpayer to present evidence, that scenario is not contemplated by the Assessment Appeals Commission. In this case, the administrative judge is of the opinion that the taxpayer has presented clear and convincing evidence as to valuation of the subject property.

With respect to the issue of market value, the administrative judge finds that the taxpayer has introduced sufficient evidence to affirmatively establish the market value of subject property as of January 1, 2005, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The taxpayer has sustained his burden.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$20,000	\$76,160	\$96,160	\$24,025

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

¹ An element of depreciation, a defect, usually incurable, caused by negative influences outside a site and generally incurable on the part of the owner, landlord or tenant. The *Dictionary of Real Estate Appraisal*, 4th ed., 2002.

² (a) "Blighted areas" are areas (including slum areas) with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use, or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

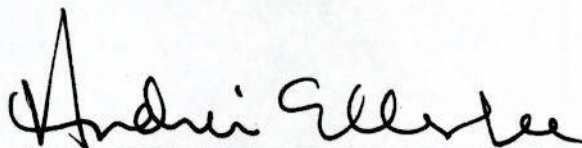
³ While there is no case law directly on point several cases and Attorney General Opinions appear to stand for the proposition that: "If the court finds that evidence is sufficient to rebut this presumption, the court shall make a written finding. . . *Hawk v. Hawk*, 855 S.W. 2d 573 (Tenn. 1993) also "[a] court is not required to assume the existence of any fact that cannot be reasonably conceived." *Peay v. Nolan*, 157 Tenn. 222, 235 (1928), 1986 Tenn. AG LEXIS 64, 86-142, August 12, 1986. In administrative proceedings, the burden of proof ordinarily rests on the one seeking relief, benefits or privilege. *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 16th day of June, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Melvin Lee Parker
Jo Ann North, Assessor of Property